

MERVIL J. COOK

IBLA 84-163

Decided June 26, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring appellant's unpatented placer mining claims CA MC 132260 through CA MC 132264 to be abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, shall file a copy of the official record of the notice of location of the claim with the proper BLM office within 90 days after the date of location of the claim. This requirement is mandatory and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

APPEARANCES: Mervil J. Cook, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Mervil J. Cook has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 22, 1983, which declared the Super Cookie #1 through #5 (CA MC 132260 through CA MC 132264) unpatented association placer mining claims abandoned and void because location notices had not been filed with BLM within 90 days after the date of location. The claims had been located on June 5, 1983, and the location notices had been filed with BLM on September 15, 1983.

On November 14, 1983, appellant submitted five new location notices for association placer mining claims covering the same land that was subject to the previous locations. In the accompanying letter appellant conceded that previous filings had been made beyond the "allotted 90 days for filing, due to serious illness and [a] death in [the] family," and expresses concern about the return of his original filing fees. Appellant further stated: "I guess

this letter could serve as an appeal, but I went through the process of having the claims recorded again and am sending you the new recordations." 1/ BLM treated this letter as an appeal. 2/

[1] As the notices of location were not filed with BLM within the 90-day period following location of the claims, BLM properly refused to accept the notices of location for recordation. For mining claims located after October 21, 1976, copies of the notice of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 U.S.C. § 1744(b) (1982), 43 CFR 3833.1-2. This requirement is mandatory, and where a mining claimant fails to comply, the claims are properly declared abandoned and void. Glenn Cox, 61 IBLA 97 (1982).

As to appellant's concern regarding return of filing fees, BLM informed him by letter dated November 30, 1983, as follows:

This is in reference to your letter of November 14, 1983, regarding the \$ 25.00 filing fee previously submitted for the recordation of the Super Cookies #1 thru #5, CA MC 132260 thru 132264. Refunds are processed automatically by our Denver Service Center. There is nothing else you need to do.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge.

---

1/ The location notices for the association placer mining claims which accompanied the notice of appeal were accepted for recordation and assigned number CA MC 136754 through CA MC 13658. These location notices indicate a Sept. 28, 1983, location date. They were recorded in San Bernardino County, California, on Oct. 17, 1983, and filed in the California State Office, BLM, on Nov. 14, 1983. All else being regular the location notices filed with BLM on Nov. 14, 1983, appear to satisfy the applicable recordation requirements.

2/ Action by this Board regarding appeals involving mining claim recordation was suspended until Apr. 1, 1985, pending determination by the U.S. Supreme Court in United States v. Locke, 105 S. Ct. 1785 (1985).

